COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

In re Petition of Verizon New England Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	Docket No. 04-33

SPRINT'S SUPPLEMENTAL RESPONSE TO
VERIZON MASSACHUSETTS' PETITION FOR ARBITRATION

Pursuant to the procedural schedule noted in the Memorandum to Verizon New England and other parties to this proceeding,[1] Sprint Communications Company L.P. ("Sprint) respectfully files this supplemental response to Verizon's arbitration petition. Given that Sprint's Motion to Dismiss is pending before the Department, nothing in this supplemental response or in the attachments should be construed an admission that Verizon's Petition merits a substantive response or as a waiver of any rights with respect to Sprint's Motion to Dismiss.

Sprint has attached a redlined version of Verizon's Proposed Amendment as Exhibit 1 to this supplemental response. Sprint's extensive revision of Verizon's draft was necessary because Verizon did not craft the amendment to reflect the new mandates

[1] D.T.E. 04-33, Memorandum dated March 26, 2004 from Tina W. Chin, Hearing Officer, to Verizon New England, *et. al*., at 2.

of the *Triennial Review Order*.[2] Sprint's proposal also takes into consideration Verizon's additional obligations as imposed under the Bell Atlantic/GTE *Merger Conditions*.

In proposing this amendment, Sprint reserves the right to ask the Department to impose upon Verizon additional unbundling or other requirements that may be revealed through the arbitration process or as a result of further clarification of the parties' obligations under the decision of the United States Court of Appeals for the District of Columbia in *United States Telecom Ass'n v. FCC,* Nos. 00-1012, 00-1015, 03-1310 *et al.*, which was issued on March 2, 2004 ("*USTA II*"). In addition, it is possible that during this proceeding the obligations of the parties may undergo further change in light of further proceedings involving *USTA II*. As is true with any relevant change in law, the interconnection agreement would have to be further amended if any such additional circumstances are imposed.

Finally, Sprint suggests that in some cases the *Triennial Review Order* simply clarified or modified existing Verizon requirements rather than making wholesale changes in law. In those cases, for example with respect to obligations that already existed, Sprint's proposed *Triennial Review Order* amendment reflects these clarifications but does not mean to suggest by this response that there has been a change in law.

[2] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) (*"Triennial Review Order"* or "TRO"), *reversed in part and remanded, United States Telecom Ass'n v. FCC,* Nos. 00-1012, 00-1015, 03-1310 *et al.* (D.C. Cir).

I. Merger Conditions

Other parties have raised the issue of Verizon's obligations under the *Merger Conditions*[3] as an additional basis to support the dismissal of Verizon's Petition. Verizon is obligated to provide services under the *UNE Remand Order*[4] and the *Line Sharing Order*[5] pursuant to Paragraph 39 of the Merger Conditions, which states:

> 39. Bell Atlantic/GTE shall continue to make available to telecommunications carriers, in the Bell Atlantic/GTE Service Area within each of the Bell Atlantic/GTE States, the UNEs and UNE combinations required in Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999) (UNE Remand Order) and Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. Dec. 9, 1999) (Line Sharing Order) in accordance with those Orders until the date of a final, non-appealable judicial decision providing that the UNE or combination of UNEs is not required to be provided by Bell Atlantic/GTE in the relevant geographic area. The provisions of this Paragraph shall become null and void and impose no further obligation on Bell Atlantic/GTE after the effective date of final and non-appealable Commission orders in the UNE Remand and Line Sharing proceedings, respectively.

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[3] *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee; for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184 Memorandum Opinion and Order, 15 FCC Rcd 14032; 2000 FCC LEXIS 5946, (2000) ("*Bell Atlantic/GTE Merger Order*") The Merger Conditions appear as Appendix D to the Bell Atlantic/GTE Merger Order ("*Merger Conditions*").

[4] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3699, para. 2 (1999) ("*UNE Remand Order*"), *reversed and remanded in part sub. nom. United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (*USTA*), *cert. denied sub nom. WorldCom, Inc. v. United States Telecom Ass'n*, 123 S.Ct 1571 (2003 Mem.)

[5] *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

The *Triennial Review* proceeding was an extension and consolidation of the *UNE Remand* proceeding and the *Line Sharing* proceeding. Both the *UNE Remand Order* and the *Line Sharing Order* were appealed to the D.C. Circuit Court and the Court remanded both decisions to the FCC in *USTA I*.[6] The FCC then consolidated the remand of those proceedings into the *Triennial Review* Proceeding and sought a stay of *USTA I* to effectuate their ability to address those issues in the *Triennial Review* Proceeding.[7] Thus there is no final non-appealable order and Verizon is still obligated to offer these services.

Verizon has argued in this and other proceedings that the *Merger Conditions* contain a sunset provision. However, the opening clause in the sunset provision states that "[e]xcept where other termination dates are specifically established herein…"[8] Paragraph 39 of the *Merger Conditions* states that the UNE condition remains … "until the date of a final, non-appealable judicial decision providing that the UNE or combination of UNEs is not required to be provided by Bell Atlantic/GTE in the relevant geographic area. The provisions of this Paragraph shall become null and void and impose no further obligation on Bell Atlantic/GTE after the effective date of final and non-appealable Commission orders in the UNE Remand and Line Sharing proceedings, respectively." Obviously the UNE condition falls within the "except where" proviso.

[6] *United States Telecom Ass'n v. FCC*, 290 F.3rd 415 (D.C. Cir. 2002) ("*USTA I*")

[7] On September 4, 2002, the D. C. Court stayed the effectiveness of its opinion until January 2, 2003. *See USTA v. FCC*, No. 00-1012, Order (D.C. Cir. Sept. 4, 2002). Then, on December 23, 2002, the D.C. Court granted the consent motion of the Commission and the Bell Operating Companies to extend the stay through February 20, 2003. *See USTA v. FCC*, Nos. 00-1012, 00-1015, Order (D.C. Cir. Dec. 23, 2002).

[8] Merger Conditions at Paragraph 64.

The FCC has addressed this issue in the *Worldcom/AT&T/Verizon Arbitration.* The FCC enforced the merger condition because the condition was not yet met.[9] The FCC stated that because the *USTA I* decision regarding line sharing was subject to a petition for rehearing, the condition in the merger had not been met. The FCC stated at paragraph 378 as follows:

> 378. After the record in this proceeding closed, the United States Court of Appeals for the District of Columbia Circuit issued an opinion addressing two Commission decisions, one of which, the *Line Sharing Order*, is directly relevant to this arbitration issue. As mentioned earlier, the Commission is reviewing its UNE rules, which includes an incumbent LEC's obligations with respect to line sharing, in the *Triennial UNE Review NPRM*, and recently extended the reply comment date to allow parties to incorporate their review and analysis of the D.C. Circuit's recent decision. We recognize, nonetheless, that Verizon's line sharing obligations are still in place in Virginia, pursuant to the merger conditions set forth in the *Bell Atlantic-GTE Merger Order*. Specifically, the relevant condition states that Verizon's line sharing obligations continue until June 16, 2003, or until the effective date of a final and non-appealable judicial decision that Verizon is not required to provide this UNE, whichever is earlier. Because the Commission has requested a rehearing of the *USTA v. FCC* decision, neither of these events has yet occurred. Consequently, we determine that we must resolve the disputes presented in this issue because the petitioners are entitled to an interconnection agreement containing terms and conditions that give practical effect to Verizon's current legal obligations. Should Verizon's line sharing obligations change, either by court or Commission action, we note that the change of law provisions contained in the parties' contracts would apply.

Verizon should be held accountable to the standard it accepted as part of the *Merger Conditions.*

[9] *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration; In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration; In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc.* 17 FCC Rcd 27039 (2002). ("*Worldcom/AT&T/Verizon Arbitration*")

II. Interconnection Agreement Amendment

A. Prefatory Provisions

Section 6. In its proposed amendment Verizon provides for the preservation of its rights should there be additional proceedings at the FCC or in court as a result of *USTA II*. The modifications to this section simply provide equal rights to both parties and also provide that the parties must negotiate the impact of such future modifications. Verizon's proposed language would simply cut off the effect of a provision without leaving the parties direction as to how to implement the change.

B. General Conditions (TRO Amendment Section 1)

Section 1.1. Sprint has inserted a new term in the proposed agreement – "Applicable law". The definition of this term is set forth in the TRO Glossary section of the amendment Verizon's proposed does not reference every rule that resulted from the *Triennial Review Order*. Nor does Verizon's proposal amendment reflect the applicability of the *Merger Conditions* as discussed above or the effect of other proceedings. For example, the specifics surround conversions of services to UNEs in 47 C.F.R. Section 51.316 are not contained in the amendment. The rule contained in 47 C.F.R Section 51.319(a)(9) prohibits ILECs from engineering the network in such a way as to disrupt or degrade CLEC access. This is not reflected in Verizon's proposed amendment. Sprint agrees that it is not necessary to repeat every rule; however, in this instance Sprint asserts that it is important to reflect this added language to ensure that the parties agree what conditions are applicable.

Section 1.2. The intent of the language added by Sprint is to clarify the scope of the Applicable Law with respect to the use of UNEs. Verizon has correctly recognized that the Court in *USTA II* vacated the qualifying service distinction. The consequence is that, except for the EEL use criteria, a UNE can be used to provide any telecommunications service. This interpretation is entirely consistent with Section 251(c)(3) of the Act, which is the basis for the Court remand. In addition 47 C.F.R. Section 51.100(b) allows CLECs that have gained access to a UNE under Section 251(c)(3) of the Act to offer information services through the same arrangement.

C. TRO Glossary

New Section 2.1. A new definition was added to clearly articulate the scope the rules and orders that determine Verizon's obligations under this amendment. As noted previously the *Merger Conditions* impose additional obligations on Verizon that were not reflected in the Verizon proposal.

Section 2.3 (former Section 2.2). The reference to the LERG was removed from the definition since it is not contained in the *Triennial Review Order*.[10] The *Triennial Review Order* also provided that non-ILEC locations entitled reverse collocation as an end point of a valid dedicated transport route.[11] The language was modified to recognize this fact.

New Section 2.4. This is a new section to add a definition for "Dark Fiber Loop" that is consistent with the definition contained in 47 C.F.R. Section 51.319(a)(6). Sprint is concerned that Verizon will attempt to use FTTH language to prohibit access to dark

[10] *Triennial Review Order*, paragraphs 364-367.

[11] *Triennial Review Order*, footnote 1126.

fiber. This is clearly not the FCC's intent. If it were the FCC's intent, the FCC would not have included it under enterprise loops in a separate section of the rules.

Section 2.5. (former Section 2.3) *See* the explanation for Section 2.3 above.

Section 2.8. (former Section 2.6) The definition was changed to be more consistent with 47 C.F.R. Section 51.319(a)(4). The term "Transmission Channel" might not be interpreted to apply to a DS1 Loop provisioned over copper facilities utilizing high-bit rate digital subscriber line equipment. Sprint's concern is that Verizon could use this language to refuse to provide DS1 loops over local loop medium where it was technically feasible. The revisions clarify that Verizon will provide the electronics consistent with 47 C.F.R. Section 51.319(a), including the specific reference included in the rules to high-bit rate digital subscriber line equipment (HDSL). HDSL equipment is used to provide DS1 services today, but is also part of the xDSL family, which is generally referred to as advanced services. Sprint's concern is based on denials of service orders by Verizon for DS1 Loops on the basis of "lack of facilities" and Sprint wants to ensure that Verizon is not using this as support for such denials. If any technical references are utilized Sprint prefers that national standards are utilized, rather than company specific standards, which can be changed unilaterally.

Section 2.9 (former Section 2.7). Similar to Section 2.8 above, Verizon's definition was changed to be more consistent with 47 C.F.R. Section 51.319(a) (5). The definition was modified to refer to a DS3 Loop as a local loop and not just a transmission channel. Consistent with the definition for loop in 47 C.F.R. Section 51.319(a), the word "requires" was modified to "includes" to ensure that Verizon will provide the necessary electronics. The word "require" can be interpreted to mean that while the loop requires the electronics, the CLEC must provide.

New Section 2.10. Sprint has added a new definition for "EEL" which is the same definition as contained in 47 C.F.R. Section 51.5 for clarification to the EEL eligibility criteria contained in Section 3.7.2 of the Verizon proposed amended agreement.

Former Section 2.11. The definition of "House and Riser Cable" was deleted as it is essentially a subset of Sub-Loop for Multiunit Premises Access and will be included in that definition.

Section 2.12 (former Section 2.9). Minor modifications were made to the definition of "Feeder" for clarification to be more consistent with the loop definition contained in 47 C.F.R. Section 51.319(a).

Section 2.13 (former Section 2.10). The definition of "FTTH Loop" was not consistent with 47 C.F.R. Section 51.319(a) as it excluded any inside wire owned or controlled by Verizon.

Section 2.16. (former Section 2.13) The definition was changed to be consistent with 47 C.F.R. Section 51.319(a) (1) (i) (A) to include the reference to inside wire owned and controlled by Verizon.

New Section 2.17. Verizon's proposed amendment did not include any reference to "Line Splitting". Sprint added a definition of "Line Splitting" and included additional terms and conditions in Section 3.3 of the Agreement to ensure its availability. The definition is consistent with 47 C.F.R. Section 51.319(a) (1) (ii).

New Section 2.18. A definition for "Loop" was added in the new Section 2.18 for simplification, so that the language in the Agreement does not keep redefining what a loop is. Verizon uses this approach throughout the agreement and Sprint is concerned that it could be used to deny access to inside wire owned or controlled by Verizon. The definition was also modified to assist in understanding and to ensure the fact that all UNE loops include attached electronics, the NID, and any inside wire owned or controlled by Verizon.

Section 2.19 (former Section 2.14). The definition of “Local Switching” was changed to be more consistent with 47 C.F.R. Section 51.319(d) (1). The phrase “unbundled from loops and transmission facilities” in Verizon’s definition could be interpreted to limit the offering of local switching separately and not in a combination of UNEs. The definition also limited the features and functions to those which Verizon offers to its own end users and not to those capable of being offered under the current switch technology. The definition did not list customized routing. Verizon must offer customized routing if it does not want to unbundle operator services.

Section 2.20 (former section 2.15). The phrase “Applicable Law” was added to clarify Verizon’s obligations.

New Section 2.21. A definition of the “Merger Conditions” was added for clarification.

New Section 2.22. A definition of “NID”, consistent with 47 C.F.R. Section 51.319(c), was added for clarification and to ensure that Sprint is not excluded from accessing certain types of NIDs at multiunit locations.

Section 2.23 (former Section 2.16). The phrase Applicable Law was added to clarify Verizon’s obligations.

Section 2.24 (former Section 2.17) The definition was slightly changed to match 47 C.F.R. Section 51.319(a) (2).

New Section 2.26. A definition for a "Point of Technically Feasible Access" was added to clarify where sub-loops could be accessed and to simplify subsequent language in the Agreement. The definition is consistent with 47 C.F.R. Section 51.319(b) (1) (i) and Section 51.319(b) (2) (i). The terms and conditions in the agreement did not recognize the fact that CLECs have the option of accessing copper sub-loop via a splice near a remote terminal. In addition, the terms and conditions in the agreement did not recognize the fact that ILECs have an obligation to offer access to fiber sub-loop at multiunit premises.

New Section 2.29. A definition of "Reverse Collocation" was added. Sites where ILECs have reverse collocated are considered end points for UNE Dedicated Transport routes.[12] The definition was added to make sure that Verizon agrees with this concept.

Section 2.28 (former Section 2.19). The definition of "Route" was slightly modified to add Reverse Collocation in determining where the end points of UNE Dedicated Transport are (see discussion for 2.27 above).

New Section 2.27. A definition of "Service Management Systems" was added. ILECs have an obligation to offer unbundled access to Service Management Systems in conjunction with call-related databases (see 47 C.F.R. Section 51.319(d) (4)). The definition and additional language was added to ensure that the capability was available to Sprint.

[12] *Triennial Review Order*, footnote 1126.

Section 2.31 (former Section 2.21). The definition proposed by Verizon is not consistent with the FCC definition in 47 C.F.R. Section 51.319(b) (2). ILECs must offer "access to multiunit premises wiring on an unbundled basis ***regardless of the capacity level or type of loop*** that the requesting telecommunications carrier seeks to provision for its customer." Pursuant to the *Triennial Review Order*,[13] multiunit premises are to be treated as enterprise customers, which mean that dark fiber sub-loops should be available. Sprint believes that Verizon's reference to FTTH here and the fact that Dark Fiber Loops were not included in its amendment will deny Sprint access to enterprise Dark Fiber Loops and multiunit sub-loops.

Section 2.32 (former Section 2.22). The definition proposed by Verizon is not consistent with the FCC definition of copper sub-loop in 47 C.F.R. Section 51.319(b) (1). Verizon's definition limited the point of access by not mentioning the splice near a remote terminal and excluded inside wire. The definition proposed by Sprint also ensures an understanding that sub-loops include attached electronic, such as repeaters.

D. UNE TRO Provisions

Section 3.1.1.1. Sprint added clarifying language from the *Triennial Review Order*[14] to ensure that Verizon cannot deny an order for a DS1 loop based on technology. The language clearly establishes an expectation that Verizon will use any technology, including HDSL, to provision DS1 Loops. For example, the rules prohibit Verizon from

[13] *Triennial Review Order*, footnote 624.

[14] *Triennial Review Order*, footnote 956.

denying an order for a DS1 Loop on the basis of “no facilities” when no traditional copper DS1 facilities are in place, but HDSL facilities are.

3.1.1.3. The last two words “and thereafter” were deleted. They would prevent a future finding of impairment on DS3 Loops to specific end user locations once a finding of no-impairment has been made by a regulatory body. Sprint does not support this position given the uncertainty in today’s regulatory environment.

Section 3.1.2.1. The restriction “or any segment thereof” are not consistent with the rules for fiber Sub-Loop for Multiunit Premises Access. A loop is the complete circuit from the MDF or its equivalent to the end-user customer premises. There is no such restriction on Sub-Loop for Multiunit Premises Access. In fact it is expressly allowed (see comments above). Sprint’s concern, given other language proposed by Verizon, is that Sprint will be denied all access to fiber in the Loop. Sprint added the phrase “mass market” to clarify that the FCC rules for FTTH are intended to apply solely to the mass market and not the enterprise market. Had the FCC intended this it would not have included separate rules for Dark Fiber Loop and Sub-Loop for Multiunit Premises Access.

Section 3.1.2.2. See the discussion for 3.1.2.1. Also, references to the inclusion of inside wire as part of the Loop was added given the fact that Verizon’s terms and conditions excluded any reference to inside wire. While Sprint does not deny that Verizon has the ability to manage its own facilities and retire copper Loop, it must follow the FCC network change regulations contained in 47 C.F.R. Section 51.325 through Section 51.333, which gives CLECs the opportunity to dispute that retirement. Language was added to ensure the fact that the parties had a common understanding of this obligation.

Section 3.1.3.2. The "Loop" definition added by Sprint delineates the origination and termination of any Loop and clearly stipulates that any attached electronics, the NID, and any inside wire owned and controlled by Verizon are included with any Loop, including a Hybrid Loop. Verizon's language is incomplete, leaving out critical elements, which could lead to disputes, and is not necessary.

Section 3.1.3.3. If either alternative (copper loop or TDM transmission equipment) is available Sprint would like the alternative to choose the method of provisioning and is willing to pay any difference in cost. A copper facility may provide higher dial-up Internet speeds and can potentially be conditioned in the future to provide advanced services. The language redefining what a Loop is was struck because it is unnecessary and incomplete.

Section 3.1.4.1. Sprint added language to clarify that the TDM requirement also applied to IDLC. The *Triennial Review Order* does not limit the IDLC alternatives only to copper and UDLC.[15]

Section 3.1.4.2. *See* explanation for 3.1.4.1.

Section 3.1.4.3. Sprint does not believe that Verizon should be allowed to avoid its obligation to provide unbundled IDLC Hybrid Loops in a timely manner. Verizon should be able to provision a loop via an existing copper Loop, an existing Universal Digital Loop Carrier or time division multiplexing facilities within the time frames that it

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[15] *Triennial Review Order* paragraph 297.

has agreed to as part of its performance measurement plan. Sprint agrees that any loop construction would be outside the normal provisioning intervals.

Section 3.1.5. Verizon's language did not include its obligation to provide access to unbundled Dark Fiber Loops. Sprint's recommended language is consistent with 47 C.F.R. Section 51.319(a) (6) and closely follows language used by Verizon for other network elements.

Section 3.2.1.2. The "at the same location" language is not in 47 C.F.R. Section 51.319(a) (1) (i) (A).

Section 3.3.-3.3.5. Verizon's terms and conditions do not contain any reference to Line Splitting even though the *Triennial Review Order* contained explicit directions for Line Splitting. Sprint's language is consistent with 47 C.F.R. Section 51.319(a) (1) (ii). The last term (3.3.5) clarifies that Sprint can provide both voice and data over the same Loop. It was added since the FCC definition explicitly refers to two separate carriers and Sprint did not want that to be used in some manner to limit Sprint's ability to utilize the full features and functionality of a UNE.

Section 3.4.1. The subtitle was changed to match the definition at 2.29.

Section 3.4.1.1. The reference to "House and Riser Cable" was deleted since the definition was deleted and Sprint believes that House and Riser cable is included in Inside Wire Sub-Loop. The definition of Inside Wire Sub-loop contained in 47 C.F.R. Section 51.319(a) (2) was added to clarify exactly what facility was at issue. The redefinition of the "Point of Technically Feasible Access" was replaced with the term since it is clearly defined at 2.26 and continual redefinition is unnecessary and leads to disputes, especially when the redefinition(s) vary throughout the document.

Section 3.4.1.1.1. Replaced the reference to “House and Riser Cable” with “Inside Wire Sub-Loop”. See Section 3.4.1.1.

Section 3.4.1.1.1.1. Replaced the term “point of interconnection” with the defined term “Point of Technically Feasible Access”. Sprint believes that this is more consistent with the FCC rules and eliminates any confusion. Verizon’s language could be interpreted to refer to a separate or different point of access, which had not been previously defined.

Section 3.4.1.1.1.2. Replaced the term “point of interconnection” with the defined term “Point of Technically Feasible Access” (see explanation immediately above).

Section 3.4.1.1.1.3. Verizon’s language was deleted since it is inconsistent with 47 C.F.R. Section 51.319(c) regarding the Network Interface Device (NID). The NID is defined as a standalone network element and is “any means of interconnection of customer premises wiring to the incumbent LEC’s distribution plant.” Furthermore, the rule states that ILECs must allow CLECs to connect its own facilities to the ILEC NID. The NID is defined as a Point of Technically Feasible Access in 47 C.F.R. Section 51.319(b) (2) (i). Therefore, any language that prohibits this is not consistent with the FCC rules.

Section 3.4.1.1.2. Replaced the term “House and Riser Cable” with “Inside Wire Sub-Loop”. See 3.4.1.1.

Section 3.4.1.1.3. Replaced “House and Riser Cable” with “Inside Wire Sub-Loop”, consistent with 3.4.1.1. Added language from 47 C.F.R. Section 51.319(c) to ensure Sprint’s right to connect its facilities to Verizon NIDs.

Section 3.4.1.1.5. Replaced “House and Riser Cable” with “Inside Wire Sub-Loop”, consistent with 3.4.1.1.

Section 3.4.1.1.6. Replaced “House and Riser Cable” with “Inside Wire Sub-Loop”, consistent with 3.4.1.1.

Section 3.4.1.2 Language from 47 C.F.R. Section 51.319(b) (3) was added to ensure the parties understood the process whereby disagreements over the technical feasibility of a Point of Technically Feasible Access would be resolved.

Section 3.4.1.3.1. “Replaced House and Riser Cable” with “Inside Wire Sub-Loop”, consistent with 3.4.1.1. Replaced the phrase “owns and controls” with “owns or controls” to match the FCC language in 47 C.F.R. Section 51.319(b) (2) and Section 51.319(b) (2) (ii). The FCC clearly anticipated situations where an ILEC might have control over inside wire but does not own it. ILECs control access to inside wire through ownership of the NID and defining the terms of that access.

Section 3.4.2. The title was changed to match the definition at Section 2.26. The defined term “Point of Technically Feasible Access” was then used to replace Verizon’s redefinition. Verizon’s language is redundant and inaccurate. It does not include the provision at 47 C.F.R. Section 51.319(b) (1) (i) which obligates ILECs to allow interconnection at or near a remote terminal by splicing into cable.

Section 3.5.1. Verizon’s disclaimers at the beginning of the paragraph are very general and all encompassing and Sprint is concerned that Verizon would use the disclaimers to deny switching for interconnection purposes. The TRO rules did not modify Verizon’s obligations to interconnect under Section 251(c) (2) of the Act and sprint’s additions clarify that fact.

Section 3.5.3. References to "Service Management System" was added in accordance with 47 C.F.R. Section 51.319(4) (i) (B) (2) to ensure Sprint's ability to access.

Section 3.6.2.1. Sprint added language stating that points where Verizon has Reverse Collocation are valid end points for Verizon Dedicated Transport. This position is consistent with the *Triennial Review Order*.[16] While Sprint agrees that OCn and SONET facilities are not standalone UNEs and cannot be purchased as such, Sprint also understands that DS1 and DS3 facilities, which are UNEs, are provisioned on OCn and SONET facilities, at the ILEC's discretion. Sprint added language that prohibits Verizon from denying orders for DS1 and DS3 Dedicated Transport because OCn and SONET facilities would be used. Sprint's concern is based on Verizon's phrasing and the possible interpretations of the words "use" and "interface".

Section 3.6.3.1. Sprint added language stating that points where Verizon has Reverse Collocation are valid end points for Verizon Dark Fiber Transport consistent with the *Triennial Review Order*.[17]

Section 3.7.1. Verizon's language does not include resold services secured under Section 251(c)(4) of the Act as a valid Qualifying Wholesale Service that can be commingled with a UNE. This is clearly allowed in the *Triennial Review Order*.[18] Sprint also modified Verizon's performance measures language. While Sprint agrees that the act of commingling the two facilities, Wholesale Service and UNE, will impact the

[16] *Triennial Review Order* footnote 1126.

[17] *Id.*

[18] *Triennial Review Order* paragraph 584.

performance, the provisioning of the individual pieces should not suffer. It should not take Verizon any longer to install a standalone DS1 UNE Loop terminated in Sprint's collocation as it does to install a DS1 UNE Loop that is to be commingled with special access transport. Sprint is concerned that Verizon will use this language to frustrate commingling requests.

Section 3.7.2.1. The use criteria contained in 47 C.F.R. Section 51.318, which was upheld by *USTA II,* states that the EEL criteria applies to DS1 equivalent circuits on a DS3 EEL (see 47 C.F.R. §51.318(b)(2) and §51.318(b)(2)(ii)). An EEL by definition is UNE Loop combined with UNE Dedicated Transport, which means that a DS3 EEL is a UNE DS3 Loop combined with UNE DS3 Dedicated Transport. Sprint believes that this distinction is important since it is possible to commingle DS1 UNE Loops on DS3 Special Access Transport, constituting a "commingled EEL". In such cases Sprint agrees that the DS1 UNE Loop must meet the use criteria, but does not agree that any Special Access DS1 equivalent circuits provisioned on the same DS3 must meet the use criteria. Sprint is concerned that Verizon's language could be interpreted that way.

Section 3.7.2.2. Modifications were made to the language consistent with 3.7.2.1 stipulating that the DS1 equivalent circuit criteria only apply to DS3 EELs. In addition, Sprint added language to ensure its ability to secure access to EELS from all of its collocation arrangements.

Section 3.8.1. Verizon's language was modified to more closely conform to 47 C.F.R. Section 51.319(a)(8) and Section 51.319(e)(5). Sprint believes that it is essential that the parties understand that a routine modification is any activity that Verizon normally undertakes, including modifications it makes for special access. The limitation of splicing to "existing splice points" is only valid to the extent Verizon does not do this for its own customers on a routine basis. That has not been proven and Sprint therefore removed it.

Section 3.8.2. While Sprint understands that it takes longer to install a facility that requires routine network modifications, it does not believe that Verizon should have the ability to delay the installation indefinitely. The FCC rules (see 3.8.1) obligate Verizon to provide routine network modifications in a non-discriminatory fashion, which means that the time that Verizon takes to make a network modification for a CLEC should be at parity with the time that it takes to make network modifications for its own customers, including any affiliate.

Section 3.9.2. Given the uncertainty of the regulatory environment and the potential for ILEC facilities to be added to or removed from the list of UNEs, Sprint does not believe that Verizon should be able to make a blanket statement that it has notified Sprint with respect to which facilities have become a Nonconforming Facility. Taken with Verizon's other language it would allow Verizon to unilaterally transfer Sprint ordered UNEs to other services or even disconnect the service, without notifying Sprint. It does not give Sprint the opportunity to dispute Verizon's interpretation that a specific facility is a Nonconforming Facility. Sprint therefore deleted the second sentence.

Similarly Sprint does not believe that fixed transition should apply to all facilities that are classified as non-conforming. The *Triennial Review Order* did not specify fixed time frames for these facilities and the existing contract is silent. Sprint therefore believes that the transition period is best negotiated between the parties based on the individual circumstances. It is possible that the transition involves only a few facilities and could be made relatively easily. On the other hand, it could involve many facilities and be quite complex, requiring a longer timeframe. Sprint's recommended language holds the CLEC accountable to agreeing to a transition plan, providing the ILEC certainty. It also provides protections to both parties by giving either party the right to exercise the dispute resolution provisions.

E. Other Issues

Sprint has not had the opportunity to thoroughly review the pricing proposals contained in Verizon's proposed amendment. In addition, it is likely that discovery will be required before Sprint can formulate any definitive positions with respect to these proposals. As a result, Sprint reserves the right to file additional comments regarding the pricing proposals set forth by Verizon in its proposed amendment.

In addition there are certain matters of disagreement between Verizon and Sprint in the operation of the current interconnection agreement that may be appropriately addressed n this proceeding. Sprint is entitled under the Act to raise additional issues not raised by Verizon. Given the nature of the filing by Verizon and the multitude of issues raised by such an approach, Sprint has not had the opportunity to formulate those issues for filing. Sprint reserves the right to file additional issues for consideration in the arbitration unrelated to the specific issues raised as a result of the *Triennial Review Order* or *USTA II*.

III. Conclusion

For the foregoing reasons and those noted in Sprint's Motion to Dismiss, the Department should dismiss Verizon's arbitration petition at least as to Sprint. If the Department does not dismiss Verizon Petition with prejudice, the Department should at least require Verizon to resubmit a pleading that:

(1) Demonstrates with specificity that Verizon has attempted to negotiate in good faith relative to Sprint and each entity with which Verizon seeks to arbitrate; and

(2) Demonstrates how Verizon has complied with the Act and the Department's procedures for negotiations, mediations and arbitrations by stating the unresolved issues and the position of each party, and specifically Sprint, with respect to those unresolved issues.

At best, Verizon's Petition is premature given that Verizon has failed to engage in any substantive negotiations relative to Sprint. The Act does not envision a policy or a process of jumping to arbitration because it is convenient for the petitioning entity to have a uniform amendment to virtually all of its existing interconnection agreements. Moreover, arbitrations are essentially private contractual matters between ILECs and CLECs, with the ultimate agreements facilitated by the Department and its Staff. There are obvious business and competitive reasons for treating arbitration proceedings in this manner.

As the Petitioner in this matter, Verizon has the minimal obligation of framing outstanding issues to be arbitrated so that the other party to the proposed agreement or amendment may respond in a specific, focused manner. Verizon has not satisfied this standard.

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Respectfully submitted,

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